

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

RAMON AYALA, EL CARTEL RECORDS, INC.
and LOS CANGRIS, INC. d/b/a CANGRIS
PUBLISHING,

Civil Action No.
05 CV 4392 (BSJ)

Plaintiffs,

v.

TEEVEE TOONS, INC. d/b/a TVT RECORDS,
TVT MUSIC, INC., JONATHAN SMITH,
ARMANDO PEREZ, and DOES 1-2000,

Defendants.

**DECLARATION OF JACQUELINE M. SUSSMAN IN
SUPPORT OF DEFENDANT'S MOTION TO DISMISS**

I, Jacqueline M. Sussman, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Vice President of Business and Legal Affairs of defendant TeeVee Toons, Inc. d/b/a TVT Records, a position I have held since 2004. I also handle the business affairs of defendant TVT Music, Inc. (collectively, with TVT Records, "TVT"). I have been working at TVT since 1992. As the Vice President of Business and Legal Affairs, I am responsible for negotiating artist agreements, soundtrack album agreements and compilation agreements. I am also responsible for, among other things, overseeing master use and synchronization licensing and overseeing copyright registrations. As a result, I have personal knowledge as to whether TVT has licensed or authorized any entities to use the Gasolina Remix at issue in this case (the "Remix") in the United States.

2. In connection with this matter and declaration, I reviewed TVT's records and spoke with those people involved in TVT's day-to-day activities relating to the Remix. I

make this declaration based upon personal knowledge and my investigation. I am over 18 years of age and can competently testify to the matters set forth herein. I submit this declaration in support of defendants' motion to dismiss for lack of subject matter jurisdiction.

3. I understand that plaintiffs assert that TVT was only licensed to reproduce the Remix on the Crunk Juice album, and that plaintiffs complain that the Remix has been licensed in Europe for uses other than on Crunk Juice. I also understand that the plaintiffs complain that allegedly unauthorized copies of the Remix are available for sale in the U.S. and by digital download.

4. I reviewed the Second Amended Complaint ("Complaint") and see that plaintiffs purport to allege direct and contributory infringement by TVT from TVT's unlawful licensing of the Remix resulting in the importation and sale of the allegedly infringing work into the U.S. (Compl. ¶¶ 26 -30). I know of absolutely no basis for plaintiffs to make these allegations in their pleading. As set forth in detail below, TVT has not been a party to any of the allegedly unlawful licensing or copying of which plaintiffs complain, has not engaged in or encouraged any reproduction or distribution of the Remix in the U.S. except in connection with the Crunk Juice album, and has not engaged in or encouraged any importation of products containing the Remix into the U.S. TVT has absolutely no relation to anyone bringing products containing the Remix into the United States.

5. First, TVT does not do any licensing in Europe; all European licensing of material in TVT's catalog takes place through a European affiliate, TVT Europe GmbH ("TVT Europe"), located in Germany, through a preexisting label distribution agreement.

6. Second, TVT has not authorized any entity (other than TVT Europe) to reproduce or distribute the Remix, either in the U.S. or abroad. In particular, TVT has not

authorized any entity to reproduce or distribute the Remix in the U.S., whether on CD, on vinyl records, by digital download or otherwise. Nor has TVT authorized or encouraged any entity to import foreign copies of the Remix into the U.S.. Indeed, I am unaware that TVT has any relationship at all with any entity importing foreign copies of the Remix into the U.S.

7. Third, the only copying or distribution of the Remix in which TVT has engaged in or authorized has been for the Crunk Juice album, which plaintiffs concede is authorized by a license agreement between the parties. TVT has not been engaged in any other copying or distribution of the Remix in the United States or elsewhere.

8. In connection with this matter and declaration, I have also reviewed the exhibits attached to the declaration of plaintiffs' attorney Jonathan S. Pollack. As set forth below, I have confirmed that one of the identified copies is not TVT's Remix, but rather, is an unauthorized remix of that Remix – that is, a derivative work based on the Remix that was created by a third party without TVT's knowledge or authorization. To the extent that some of the copies identified in the exhibits and complaint are TVT's Remix that is at issue in this case, they are the Remix as put out by Edel Italia ("Edel"), an Italian record company, pursuant to a distribution agreement with SPV, a subdistributor of TVT Europe, or are copies distributed by other parties without the authorization of TVT. I have confirmed that none of the retailers that are identified in those exhibits as shipping copies of the Remix into the U.S. were licensed or authorized by TVT to distribute the Remix.

9. The copy identified in the various materials of Exhibits A-F of Mr. Pollack's declaration, and referred to in Paragraph 30b of the Complaint, purchased by Mr. Pollack through the website www.discopiu.com, is a compilation album published by Edel that contains the Remix. TVT did not make this copy of the Remix, and any licensing or

authorization of Edel to reproduce or distribute took place in Europe. Nor did TVT authorize www.discopiu.com, which appears to be an Italian CD retailer, to distribute the Remix from Italy into the U.S.

10. The copy of the Remix identified in Exhibit G of Mr. Pollack's declaration, and referred to in Paragraphs 30c and 30e of the complaint, purchased by Mr. Pollack through the website www.turntablelab.com, and allegedly available in a New York City record store, was released by Victor "Nore" Santiago, as evidenced by Nore's label, "Thugged Out Militainment," under the name "'Gasolina' (Dirty South Remix)." A true and correct copy of Nore's "Thugged Out Militainment" label from this release is attached hereto as Exhibit A. (The fact that "Thugged Out Militainment" is Nore's label is confirmed by the copy of a web page of an online seller of mix-tape CDs, which claims to be a partner of Thugged Out Militainment, that is attached as Exhibit B.) TVT did not license or authorize Nore or Thugged Out Militainment to reproduce or distribute the Remix in this format (or any other). Nor did TVT authorize www.turntablelab.com to distribute the Remix.

11. The copy identified in Exhibit H and I of Mr. Pollack's declaration and referred to in Paragraph 30d of the complaint, purchased by Mr. Pollack through the website www.mixunit.com and allegedly available in a Connecticut store, is not TVT's Remix but is an unauthorized remix of TVT's Remix. I have purchased this product and listened to it. A true and correct copy of the invoice concerning this purchase is attached hereto as Exhibit C. It is a remixed version of the TVT Remix – in particular, a version of the TVT Remix to which someone has added additional content – that constitutes a derivative work based on the Remix. TVT did not license or authorize any entity to create, reproduce or distribute the song identified

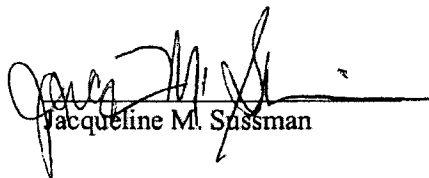
in Mr. Pollack's Exhibit H and I. This song was made and distributed without the authorization or knowledge of TVT.

12. The copy identified in Exhibit J of Mr. Pollack's declaration and referred to in Paragraph 30a of the Complaint, purchased by Mr. Pollack through the website www.nannucci.com, like the copy discussed above in Paragraph 9, is Edel's compilation album containing the Remix. TVT did not make this copy of the Remix, and any licensing or authorization of Edel to reproduce or distribute the Remix took place in Europe. Nor did TVT authorize www.nannucci.com, which appears to be an Italian CD retailer, to distribute the Remix from Italy into the U.S.

13. I understand that plaintiffs complain that the Remix has been reproduced outside the U.S. with allegedly improper credit or identification of the track as Gasolina by Daddy Yankee. To the extent that has occurred, TVT had nothing to do with that. TVT has no involvement at all in the writing of credits, liner notes, etc. for tracks licensed to third parties in Europe or elsewhere outside the United States.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 21st day of August, 2005 at New York, New York.


Jacqueline M. Sussman